INTERAGENCY QUESTIONS AND ANSWERS REGARDING FLOOD INSURANCE - JULY 23, 1997

Background

The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the two federal flood insurance statutes, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Reform Act required the OCC, Board, FDIC, OTS, and NCUA to revise their current flood insurance regulations and required the FCA to promulgate flood insurance regulations for the first time. The agencies fulfilled these requirements by issuing a joint final rule in the summer of 1996. See 61 FR 45684 (August 29, 1996).

Purpose

The purpose of these Interagency Questions and Answers is to consolidate, to the extent possible, useful flood insurance information into a comprehensive document. These Interagency Questions and Answers supplement other documents that the agencies are not superseding, including, for example, interagency staff flood insurance interpretive letters.

Interagency Questions and Answers Regarding Flood Insurance

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I. Definitions.

Designated Loan - A loan secured by a building or mobile home that is located or to be located in a special flood hazard area (SFHA) in which flood insurance is available under the Act.

1. Is an interim loan to construct a commercial building included in this definition?

   Answer: Yes. If the purpose of the loan is to construct a building (assuming the loan is secured by that building), the Regulation applies. If the community in which the property is located participates in the National Flood Insurance Program (NFIP), then NFIP policies, subject to certain conditions and restrictions, can be purchased to provide coverage during the construction period for a building that will be located in an SFHA.

2. Are loans secured by raw land that will be developed into buildable lots subject to the Regulation?

   Answer: No. Acquisition and development loans would not be subject to the Regulation because they do not meet the definition of a "designated loan." However, when the final construction phase of an ADC (acquisition, development, construction) project commences, the Regulation becomes applicable. This will require lenders to determine whether the property is located in an SFHA. If the building securing the loan is located or to be located in an SFHA, the other requirements of the Regulation will also apply. As noted above, the NFIP permits policies (subject to certain conditions and restrictions) to be purchased prior to the actual construction of a building.

3. Is a home equity loan considered a "designated loan?"

   Answer: Yes, a home equity (or other) loan can be a designated loan, regardless of the lien priority, if: the loan is secured by a building or a mobile home; the collateral is located in an SFHA; and, the community where the property is located participates in the NFIP.

4. Are draws against approved lines of credit a "triggering event" requiring a flood determination under the Regulation or is it only the original application for the line of credit that triggers a determination?

   Answer: Assuming that the line of credit is secured by a building and is thereby a "designated loan," a determination is required when application is made for the loan. Draws against an approved line would not require further determinations. However, a request for an increase in the line of approved credit is a triggering event and might require a new determination, depending upon whether a *previous* determination was done. (See the response to Question 4 in Section V, Required use of Standard Flood Hazard Determination Form)

5. If the loan request is to finance inventory stored in a building located within an SFHA but the building is not security for the loan, is flood insurance required?

   Answer: No. The Act looks to the collateral securing the loan. In this example, the collateral does not meet the definition of a "*designated* loan" because it is not a building or mobile home.

6. If the building and contents both secure the loan, and the building is located in an SFHA, in a community that participates in the NFIP, what are the requirements for flood insurance? What if the contents securing the loan are located in buildings other than the building securing the loan?

   Answer: Flood insurance is required for the building located in the SFHA and any contents stored in that building. If *collateral securing the loan is stored in buildings that do not secure the loan and these bui*ldings are not located in an SFHA, then flood insurance is not required on those contents.

7. Does the Regulation apply where the lender is taking a security interest only as an "abundance of caution?"

   Answer: Yes. The Act looks to the collateral securing the loan, not to the purpose of the loan. If the lender takes a *security* interest in improved real estate, the Regulation applies without regard to the purpose of the loan.

8. If a borrower offers a note on a single family dwelling as collateral for a personal loan but the lender does not take a security interest in the dwelling itself, is this a "designated loan?"

   Answer: No. A designated loan is a loan secured by a building or mobile home. In this example, the lender did not take a security interest in the building, therefore, the loan is not a "designated loan."

9. Does the Regulation apply to loans that are being restructured because of the borrower's default on the original loan?

   Answer: Yes, assuming that the loan otherwise meets the definition of a "designated loan" and if the lender increases the *amount of* the loan, or extends or renews the terms of the original loan.

10. A lender makes a loan (not secured by real estate) on the condition that a third party personally guarantees the loan and permits the lender to take a security interest in improved real estate owned by the third party. Is this a "designated loan" to which the Regulation applies if the guarantor's property is located in an SFHA in a community that participates in the NFIP?

    Answer: Yes. The making of a loan on condition of a personal guarantee by a third party and further secured by improved *real* estate *owned* by that third party is so closely tied to the making of the loan that it is considered a "designated loan" under the Regulation.

II. Requirement to purchase flood insurance where available.

1. If flood insurance is not available because the community in which the property securing the loan is located is a non-participating community in the NFIP, does the Regulation apply?

   Answer: Yes. The Regulation still applies, although it does not require the borrower to obtain flood insurance. The *lender* must *make* a determination on the Special Flood Hazard Determination Form (SFHDF) to determine if the property is located in an SFHA and notify the borrower. The lender may make a conventional loan in an SFHA in a non-participating community if it chooses to do so. Government-guaranteed or insured loans (e.g., SBA, VA, FHA), however, are not permitted to be made in non-participating communities (see 42 USC §4106(a)).

Nevertheless, institutions should exercise good risk management practices to ensure that making loans on properties that are in an SFHA where no flood insurance is available does not create unacceptable risks in an institution's loan portfolio.

2. Does the Regulation apply loans purchased from others?

Answer: No. The Regulation lists certain events that trigger its requirements: making, increasing, extending or renewing a designated loan. The purchase of a loan is not an event that requires a purchaser to make a *new* determination at the time of purchase. However, if the lender becomes aware at some point during the life of the loan that flood insurance is required, then the lender must comply with the Regulation. Similarly, if the lender extends, increases or renews the loan, the Regulation applies.

3. What about table funding programs? Are they treated as originations or as loans purchased from others?

Answer: Loans made through a table funding process will be treated as though the party providing the funds has originated the loan. The funding party must comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

4. How are loans that are now under-insured because of previous insurance limitations to be handled?

Answer: In accordance with the Act, the Federal Insurance Administration has increased the amount of insurance available under the NFIP. Consequently, loans that previously had principal balances in excess of the *program* limits may now be underinsured. The new insurance limitations went into effect on March 1, 1995. Lenders and servicers must adjust coverage limits at the first renewal date or the first anniversary date following March 1, 1995, if the policy is a multi-year policy. Loans made after March 1, 1995, are subject to the new limits.

5. If the insurable value of the building securing the loan is less than the outstanding balance of the loan, can a lender require the borrower to obtain flood insurance up to the balance of the loan?

Answer: No. The insurable value of the improvements to the real estate that secures the loan governs the amount of insurance *that* is required. The amount of required insurance coverage is the lesser of the principal balance of the loan(s) or the maximum coverage available under the NFIP. An NFIP policy will not provide insurance coverage for losses in excess of the value of the improvements. Since the NFIP policy does not cover land value, lenders should determine the amount of insurance necessary based on the value of the improvements.

6. How do the flood insurance requirements apply in situations involving loan servicing?

Scenario 1- Loan is originated by a regulated lender and secured by a building on property located in an SFHA in a community in which flood insurance is available under the Act. Borrower is provided appropriate notice and insurance is obtained. Lender services the loan. Loan is subsequently sold to a non-regulated party and servicing is transferred to that party. What responsibilities are imposed on the regulated lender? What if the regulated lender only transfers or sells the servicing rights?

Answer: The lender must comply with all requirements of the Regulation, including making the initial *determination*, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. When the loan is sold and servicing is transferred to the new servicer, the lender must provide notice of the identity of the new servicer to FEMA or its designee.

If the lender retains ownership of the loan and only transfers or sells servicing rights to a non-regulated party, the lender must notify FEMA or its designee of the identity of the new servicer. The servicing contract should require the servicer to comply with all the requirements that are imposed on the lender as owner of the loan, including escrow of insurance premiums and forced placement (if necessary).

More generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, forced placement and flood hazard determination fee provisions of the Act and Regulation primarily to ensure that they may perform the administrative tasks for the lender, without fear of liability to the borrower for the imposition of unauthorized charges. In addition, the preamble to the Regulation emphasizes that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the lender or from other commonly accepted standards for performance of servicing obligations. The lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer will maintain compliance with the flood insurance requirements.

Scenario 2 - Loan is originated by a non-regulated lender. Property is located in an SFHA but the lender did not make an initial determination or notify borrower of the need to obtain insurance. Loan is purchased by regulated lender who also services the loan. What are the responsibilities of the regulated lender? What if the regulated lender only purchases the servicing rights?

Answer: If the loan is purchased by the regulated lender, no determination is necessary at that point nor is any notice to FEMA required. If, at some time in the future, the lender becomes aware that the property is located in an SFHA in a community in which flood insurance is available under the Act, it must notify the borrower of that fact and require the borrower to purchase flood insurance. If the borrower does not voluntarily comply, the lender must force place the insurance. If servicing is subsequently sold or transferred, the lender must also notify FEMA or its designee of the identity of the new servicer.

If the regulated lender purchases only the servicing rights to the loan, the lender is only obligated to follow the terms of its servicing contract with the owner of the loan.

7. A loan is secured by multiple agricultural buildings located throughout a large geographic area. Some of the properties are located in an SFHA and others are not. In addition, the buildings are located in several jurisdictions or counties where some of the communities participate in the NFIP, and others do not. What are the flood insurance requirements for security properties in this scenario?

Answer: Flood insurance would be required only on those buildings located in an SFHA in which the community participates in *the* NFIP. A notice of special flood hazards is required for those buildings located in an SFHA whether or not the community participates in the NFIP. The amount of insurance required will depend upon the principal amount of the loan, the value of the buildings located in participating communities and the amount of insurance available under the NFIP.

For example, a loan in the principal amount of $150,000 is secured by 5 buildings, 3 of which are located in SFHAs within participating communities. The properties are non-residential in nature, therefore the maximum amount of insurance available under the NFIP is $500,000 per building. Each of the three buildings located in an SFHA must be covered by flood insurance. The total required amount of insurance for the three buildings would be the lesser of $150,000 or the value of the three buildings with each building insured separately from the other. The amount of required flood insurance could be allocated among the three buildings in varying amounts, so long as each is covered by flood insurance.

8. What is the appropriate amount of coverage under federal flood insurance legislation with respect to condominiums, in particular, multi-story condominium complexes?

Answer: Effective October 1, 1994, the Federal Insurance Administration issued a new form of Master Policy for condominiums - the Residential Condominium Building Association Policy (RCBAP). To meet federal flood insurance requirements, an RCBAP should be purchased in the amount of at least 80% of the replacement value of the building or the maximum amount available under the NFIP (currently $250,000 multiplied by the number of units), whichever is less. For instance, the maximum amount of coverage on a 50 unit condominium building could be up to $12,500,000 ($250,000 x 50). However, if the replacement value of the building was only $10,000,000, the condominium association could purchase a policy of $8,000,000 and not be required to have a co-insurance payment in the event of a flood. The $8,000,000 of coverage would meet the requirements of the Regulation for all the units within the condominium. A lender should make a similar analysis to determine the amount of coverage for other condominium complexes where flood insurance is required.

When making a loan on a condominium unit located in an SFHA, lenders should determine whether a master policy or similar product, provides adequate flood insurance coverage and is in place at the time the loan is made. Lenders should further ensure that a mechanism is in place (possibly a covenant on the part of the condominium association) that provides for adequate flood insurance coverage for the term of the loan.

9. A lender has a loan secured by a condominium unit in a multi-unit complex whose condominium association allows its existing flood insurance policy to lapse. As a result, there is no flood insurance coverage for the condominium unit. What recourse does the lender have?

Answer: The NFIP does make an individual condominium unit policy available (the Dwelling Form), in addition to association master policies. In this instance, the lender after receiving notice that the association policy has lapsed, must notify the unit owner according to the forced placement procedures to obtain a policy (within 45 days) for the amount of the loan or the maximum amount of coverage available, whichever is less.

III. Exemptions.

1. What are the exemptions from coverage?

Answer: There are only two exemptions from the purchase requirements: The first applies to State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA. The second applies if the original principal balance of the loan is $5,000 or less, and the original repayment term is one year or less. Both of these conditions must be present for the second exemption to apply.

IV. Escrow requirements.

The effective date of the escrow requirement was October 1, 1996. Does the escrow requirement apply to applications received before October 1, 1996?

Answer: No. The escrow *requirement* applies only to loans closed on or after October 1, 1996.

2. Are multi-family buildings or mixed-use properties included in the definition of "residential improved real estate?" Are escrows required?

Answer: The Regulation states *that* if the collateral securing the loan meets the definition of "residential improved real estate" and the lender requires escrows for other items (e.g., hazard insurance or taxes), then the lender is required to also escrow flood insurance premiums.

Multi-family buildings. Neither the Act nor the Regulation distinguishes whether residential improved real estate is single or multi-family, or whether it is owner or renter-occupied. The preamble to the Regulation indicates that single family dwellings (including mobile homes), two to four family dwellings, and multi-family properties containing five or more residential units are covered under the Act's escrow provisions. If the building securing the loan meets the Regulation's definition of residential improved real estate, and the lender requires the escrow of other items, such as taxes or hazard insurance premiums, the lender is required to also escrow premiums and fees for flood insurance.

Mixed-use properties. The lender should look to the primary use of a building to determine if it meets the definition of "residential improved real estate." For example, a building having a retail store on the ground level with a small upstairs apartment used by the store's owner is generally considered a commercial enterprise and consequently would not constitute a residential building under the definition. Even though the Regulation does not require escrows for flood insurance, the lender may impose such a requirement through contract.

On the other hand, if the primary use of a mixed-use property is for residential purposes, the Regulation's escrow requirements apply.

3. When must escrow accounts established for flood insurance purposes be administered in accordance with the escrow rules under Section 10 of RESPA?

Answer: Lenders should look to the definition of "federally related mortgage loan" contained in RESPA to see if a particular loan is subject to Section 10. Generally, only loans on one to four family dwellings will be subject to the escrow requirements of RESPA. Consequently, only those escrow *accounts* established for loans subject to RESPA are required to conform with Section 10 of RESPA. Loans on multi-family dwellings with five or more units are not covered by RESPA requirements.

Pursuant to the Regulation, however, lenders must escrow premiums and fees for any required flood insurance if the lender requires escrows for other purposes such as hazard insurance or taxes. This requirement pertains to any loan, including those subject to RESPA. The preceding paragraph addresses the requirement for administering loans covered by RESPA. The preamble to the Regulation contains a more detailed discussion of the escrow requirements.

4. Do voluntary escrow accounts established at the request of the borrower, trigger a requirement for the lender to escrow premiums for required flood insurance?

Answer: No. If escrow accounts for other purposes are established at the voluntary request *of* the borrower, the lender is not required to establish escrow accounts for flood insurance premiums. Examiners should review the loan policies of the lender and the underlying legal obligation between the parties to the loan to determine whether the accounts are in fact voluntary. For example, if the loan policies of the lending institution require borrowers to establish escrow accounts for other purposes and the contractual obligation permits the lender to establish escrow accounts for those other purposes, the lender will have the burden of demonstrating that an existing escrow was made pursuant to a voluntary request.

5. Will premiums paid for credit life insurance, disability insurance, or similar insurance programs be viewed as escrow accounts requiring the escrow of flood insurance premiums?

   Answer: No. Premiums paid for these *types* of insurance policies will not trigger the escrow requirement for flood insurance premiums.

6. Will escrow-type accounts for multi-family building commercial loans trigger the escrow requirement for flood insurance premiums?

   Answer: Various types of accounts are established in connection with commercial purpose real estate loans. These loans typically involve multi-family properties and are substantially different in purpose and type from escrow accounts on single family residences. These involve accounts such as "interest reserve accounts," "compensating balance accounts," "marketing accounts," and similar accounts that may be established by contract between the purchaser and seller of the building (although administered by the lender in some cases). Accounts established in connection with the underlying agreement between the buyer and seller, or that relate to the commercial venture itself are not the type of accounts that constitute escrow accounts for the purpose of the Regulation. Escrow accounts for the protection of the property, such as escrows for hazard insurance premiums or local real estate taxes, are the types of escrows that trigger the requirement to escrow flood insurance premiums.

7. What requirements for escrow accounts apply to properties covered by Residential Condominium Building Association Policies?

   Answer: RCBAPs are policies purchased by the condominium association on behalf of the individual unit owners in the condominium. The premiums on the policy are paid by a portion of the periodic dues paid to the association by the condominium owners. When a lender makes a loan on the purchase of a condominium over which a RCBAP is in place and the premiums are paid by dues to the condominium association, the escrow requirement is satisfied. Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

V. Required use of Standard Flood Hazard Determination Form (SFHDF).

1. Does the SFHDF replace the borrower notification form?

   Answer: No. The notification form is used to notify the borrower(s) that they are purchasing improved *property* located in an SFHA. The financial regulatory agencies, in consultation with FEMA, included a revised version of the sample borrower notification form in Appendix A to the Regulation. The SFHDF is used by the lender to determine whether the property securing the loan is located in an SFHA.

2. Must the SFHDF be provided to the borrower? If so, must the borrower sign the form acknowledging receipt?

   Answer: While it may be a common practice in some areas for lenders to provide a copy of the SFHDF to the *borrower* to give to the insurance agent, lenders are neither required to, nor prohibited from, providing the borrower with a copy of the form. Signature of the borrower is not required on the SFHDF.

3. May the SFHDF be used in electronic format?

   Answer: Yes. FEMA, in the final rule adopting the SFHDF stated: If an electronic format is used, the format and exact layout of the Standard Flood Hazard Determination Form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the form. It should be noted, however, that the lender must be able to reproduce the form upon receiving a document request by its Federal supervisory agency.

4. Section 528 of the Act permits a lender to rely on a previous determination using the SFHDF when it is increasing, extending, renewing or purchasing a loan secured by a building or a mobile home. The Act omits the "making" of a loan as a permissible event to rely on a previous determination. May a lender rely on a previous determination for a refinancing or assumption of a loan?

   Answer: It depends. If a subsequent loan involving a refinancing or *assumption* is made on the same property by the same lender who obtained the original determination, and the other requirements contained in Section 528 are met, the lender may rely on the previous determination. Section 528 of the Act requires that a lender may rely on a previous determination only if the original determination was recorded on the SFHDF within the previous seven years and there were no map revisions or updates affecting the security property since the original determination was made. However, a loan refinancing or assumption made by a lender other than the lender who obtained the original determination would constitute "making" a new loan, thereby requiring a new determination.

5. If a borrower requesting a home equity loan secured by a junior lien provides evidence that flood insurance coverage is in place, does the lender have to make a new determination? Does the lender have to adjust the insurance coverage?

   Answer: It depends. Assuming the requirements in Section 528 are met and the lender made the first mortgage, then a new determination would not be necessary. If, however, a lender other than the one that made the first mortgage loan is making the home equity loan, a new determination would be required because this lender would be deemed to be "making" a new loan. In any event, the institution will need to determine if the amount of insurance in force is sufficient to cover either the principal balance of all loans (including the home equity loan) or the maximum amount of coverage available on the improved real estate, whichever is less.

VI. Forced placement of flood insurance.

1. Is forced placement allowed? What are the procedures?

Answer: The Act and *Regulation* require a lender to force place flood insurance if all of the following circumstances occur:

- The lender determines at any time during the life of the loan that the property securing the loan is located in an SFHA;
- The community in which the property is located participates in the NFIP;
- Flood insurance coverage is inadequate or does not exist; and
- The borrower fails to purchase the appropriate amount of coverage.

In order to force place, a lender must notify the borrower of the required amount of flood insurance that must be obtained within 45 days after notification. The notice must also state that if the borrower does not obtain the insurance within the 45 day period, the lender will purchase the insurance on behalf of the borrower and may charge the borrower the cost of premiums and fees to obtain the coverage. Standard FNMA/FHLMC documents permit the servicer or lender to add those charges to the principal amount of the loan.

FEMA developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with forced placement procedures. FEMA published these procedures in the Federal Register on August 29, 1995 (60 FR 44881). Appendix A of the FEMA publication contains examples of notification letters to be used in connection with the MPPP.

2. Can a servicer force place on behalf of a lender?

Answer: Yes. Assuming the statutory prerequisites for forced placement are met, and subject to the servicing contract between the lender *and* the servicer, the Act clearly authorizes servicers to force place flood insurance on behalf of the lender, following the procedures set forth in the Regulation.

3. When forced placement occurs, what is the amount of insurance required to be placed?

Answer: The amount of flood insurance coverage *required* is the same regardless of how the insurance is placed. (See Section II. Requirement to purchase flood insurance where available.)

VII. Determination fees.

1. When can lenders or servicers charge the borrower a fee for making a determination?

Answer: There are four instances under the Act and Regulation when the borrower can be charged a specific fee for a flood determination:

- When the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower;

- When the determination is prompted by a revision or updating by FEMA of floodplain areas or flood-risk zones;

- When the determination is prompted by FEMA's publication of a notice or compendia that affects the area in which the security property is located; or

- When the determination results in forced placement of insurance.

- Loan or other contractual documents between the parties may also permit the imposition of fees.

2. May charges made for life of loan reviews by flood determination firms be passed along to the borrower?

Answer: Yes. Many flood determination firms provide a service to the lender for conducting a periodic review of the loan during the time it is outstanding to ascertain whether the original determination remains valid. This service is sometimes coupled with the making of the original determination and the fee charged is a composite one for conducting both the original and subsequent reviews. Charging a fee for the *original* determination is clearly within the permissible purpose envisioned by the Act. The agencies agree that a determination fee may include, among other things, reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of property securing a loan in order to make determinations on an ongoing basis.

Consequently, the agencies also believe that a fee for a life of loan service may be passed along to the borrower. However, because the life of loan fee is based on the ability to charge a determination fee, the monitoring fee may be charged only if the events specified in the answer to question VII.1 occur.

VIII. Notice of special flood hazards and availability of Federal disaster relief.

1. Does the notice have to be provided to each borrower for a real estate related loan?

Answer: The notice must be provided to a borrower only when the lender determines that the property securing the loan is or will be located in an SFHA. In a transaction involving multiple borrowers, the agencies believe it is only necessary to provide the notice to any one of the borrowers in the *transaction*. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the notice will be provided.

2. Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the notice requirement applied in these situations?

Answer: The notice requirement can be met by lenders in mobile home loan transactions if notice is provided to the borrower as soon as *practicable* after determination that the mobile home will be located in an SFHA and, if possible, before completion of the loan transaction. In circumstances where time constraints can be anticipated, regulated lenders should use their best efforts to provide adequate notice of flood hazards to borrowers at the earliest possible time.

In the case of loan transactions secured by mobile homes not located on a permanent foundation, the agencies note that such "home only" transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions. However, as indicated in the preamble to the Regulation, the agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and appropriate notice must be given to the borrower under those provisions. If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.

3. When is the lender required to provide notice to the servicer of a loan that flood insurance is required?

Answer: Because the *servicer* of a loan is often not identified prior to the closing of a loan, the Regulation requires that notice be provided no later than the time the lender transmits other loan data, such as information concerning hazard insurance and taxes, to the servicer.

4. What will constitute appropriate form of notice to the servicer?

Answer: Delivery to the *servicer* of a copy of the notice given to the borrower is appropriate notice. The Regulation also provides that the notice can be made either electronically or by a written copy.

5. In the case of a servicer affiliated with the lender, is it necessary to provide the notice?

Answer: Yes. The Act *requires* the lender to notify the servicer of special flood hazards and the Regulation reflects this requirement. Neither contains an exception for affiliates.

6. How long does the lender have to maintain the record of receipt by the borrower of the notice?

Answer: The record of receipt provided by the borrower must be maintained for the time that the lender owns the loan. *Lenders* may keep the record in the form that best suits the lender's business practices. Lenders may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their Federal supervisory agency.

IX. Notice of servicer's identity.

1. When a lender makes a designated loan and it will be servicing that loan, what are the requirements for notifying the Director of FEMA or the Director's designee?

   Answer: FEMA stated in a June 4, 1996 letter, that the Director's designee is the insurance company issuing the flood insurance policy. The borrower's purchase of a policy (or the lender's forced placement of a policy), will *constitute* notice to FEMA when the lender is servicing that loan. In the event the servicing is subsequently transferred to a new servicer, the lender must provide notice to the insurance company of the identity of the new servicer.

2. Would a RESPA Notice of Transfer sent to the Director of FEMA (or the Director's designee) satisfy the regulatory provisions of the Act?

   Answer: The delivery of a copy of the Notice of Transfer or any other *form* of notice is sufficient if the sender includes, on or with the notice, the following information that FEMA has indicated is needed by its designee:

   - Borrower's Full Name
   - Flood Insurance Policy Number
   - Property Address (including city and state)
   - Name of bank or servicer making notification
   - Name and address of new servicer
   - Name and telephone number of contact person at new servicer

3. Can delivery of the notice be made electronically, including batch transmissions?

   Answer: Yes. The Regulation specifically permits transmission by electronic means and a timely batch transmission of the notice would also be permissible, if it is acceptable to the Director's designee.

4. If the loan and its servicing rights are sold by the lender, is the lender required to provide notice to the Director or the Director's designee?

   Answer: Yes. Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of *the* identity of either the owner or servicer of the loan.

5. Is the lender required to provide notice when a servicer other than the lender sells or transfers the servicing rights to another servicer?

   Answer: No. The obligation of the lender to notify the Director or the Director's designee of the identity of the servicer transfers to the new servicer. The duty to notify the Director or the Director's designee of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer. For example, First Financial Institution makes and services the loan. It then sells the loan in the secondary market and also sells the servicing rights to First Financial Mortgage Company. First Financial Institution notifies the Director's designee of the identity of the new servicer and the other information requested by FEMA so that FEMA can track the loan. If First Financial Mortgage Company later sells the servicing rights to another firm, First Financial Mortgage Company is responsible for notifying the Director's designee of the identity of the new servicer, not First Financial Institution.

6. In the event of a merger of one lending institution with another, what are the responsibilities of the parties for notifying the Director's designee?

   Answer: If an institution is acquired by or merges with another institution, the duty to provide notice for the loans being serviced by the acquired institution will fall to the successor institution in the event that notification is not provided by the acquired institution prior to the effective date of the acquisition or merger.

X. Appendix A to the Regulation - Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.

1. Is use of the sample form of notice mandatory? Can it be revised to accommodate a lender's needs?

   Answer: Although lenders are required to provide a notice to a borrower who is purchasing property secured by an improved *structure* located in an SFHA, use of the sample form of notice provided in Appendix A is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form if they choose. However, a lender-revised form must provide the borrower with at least the minimum information required by the Regulation. Therefore, lenders should consult the Regulation to determine the information needed.